

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DERRICK M. SIMON,)
) CASE NO. C12-0979-JLR-MAT
Plaintiff,)
)
v.)
) ORDER RE: PENDING MOTIONS
ROBIN MURPHY, et al.,)
)
Defendants.)
_____)

Plaintiff Derrick M. Simon proceeds *pro se* and *in forma pauperis* (IFP) in this civil rights matter pursuant to 42 U.S.C. § 1983. A number of motions are currently pending in this matter. (Dkts. 20, 22-26.) Having considered the pending motions, the Court does hereby find and ORDER as follows:

(1) Defendants filed a Motion to Stay Discovery Pending Motion to Dismiss. (Dkt. 22.) Defendants state that the pending motion to dismiss will dispose of the entire case, that ongoing discovery will burden the State and waste resources, that staying discovery will not prejudice plaintiff, and that the Court's ruling on the motion to dismiss could affect the

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01 scope of discovery. Plaintiff did not respond to the motion and the Court construes this failure
02 to respond as an admission that the motion has merit. Local CR 7(b)(2). The Court further
03 finds the request to stay discovery warranted. Accordingly, defendants' motion to stay
04 discovery (Dkt. 22) is GRANTED.

05 (2) Plaintiff seeks the appointment of counsel. (Dkt. 24.) There is no right to
06 have counsel appointed in cases brought under § 1983. Although the Court, under 28 U.S.C. §
07 1915(e)(1), can request counsel to represent a party proceeding IFP, it may do so only upon a
08 showing of exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.
09 1986). A finding of exceptional circumstances requires an evaluation of both the likelihood of
10 success on the merits and the ability of the individual to articulate his claims *pro se* in light of
11 the complexity of the legal issues involved. *Id.* In this case, it cannot be said that plaintiff has
12 demonstrated a likelihood of success on the merits, or shown that, in light of the complexity of
13 the legal issues involved, he is unable to articulate his claims *pro se*. Accordingly, plaintiff's
14 request for the appointment of counsel (Dkt. 24) is DENIED.

15 (3) Plaintiff submitted a "Motion for Amended Complaint[.]" (Dkt. 23.)
16 However, the document submitted does not contain an actual motion and, rather, appears to
17 consist solely of an amended complaint. Defendants do not oppose the motion to amend, but
18 request guidance as to whether a response to a motion or an amended answer is required.
19 Given the lack of opposition, and because "leave [to amend a pleading] shall be freely given
20 when justice so requires[.]" Fed. R. Civ. P. 15 (a), the Court GRANTS the motion to amend
21 (Dkt. 23). The Court further construes the document submitted as plaintiff's Amended
22 Complaint and directs defendants to submit an Amended Answer within **fourteen (14) days** of

01 the date of this Order.

02 (4) Plaintiff also submitted a “Motion to Amend the First Page of the Initial
03 Complaint[]” and “Motion to Strike the First Page of the Initial Complaint[.]” (Dkt. 26.)
04 Defendants do not oppose the motion. (Dkt. 28.) However, it is not clear to the Court what
05 information plaintiff seeks to amend or whether the intended amendment applies to the initial or
06 amended complaint. Nor does it otherwise appear that the requested motion or amendment is
07 necessary. (*See, e.g.*, Dkt. 26-1 at 1 (reflecting that plaintiff is unaware of the local court rules
08 and desires to amend the initial page in a later motion).) Accordingly, plaintiff’s motion to
09 amend/strike (Dkt. 26) is DENIED. Should plaintiff seek to again amend his pleading, he
10 must submit a motion to amend explaining his proposed amendment and accompanied by a
11 proposed second amended complaint.

12 (5) Plaintiff requests an extension of time to respond to defendants’ motion to
13 dismiss. (Dkt. 25.) He appears to request that the pending motion be renoted from November
14 2, 2012 to January 5, 2013. Defendants do not object to the request for an extension of time,
15 but ask that the extension be limited to one month. (Dkt. 27.) However, the Court finds
16 plaintiff’s request reasonable under the circumstances. Plaintiff’s motion for an extension of
17 time (Dkt. 25) is GRANTED and defendants’ motion to dismiss (Dkt. 20) is RENOTED for
18 consideration on **January 4, 2013**. Plaintiff must submit his response to the motion on or
19 before **December 31, 2012** and defendants may submit a reply on or before the noting date.
20 **Plaintiff is advised that, given the lengthy period of time granted for his response to the**
21 **pending motion, any request for an additional extension of time is unlikely to succeed.**

22 (6) The Court also observes that several of plaintiff’s motions did not indicate

01 service on defendants. **Plaintiff is hereby reminded, as stated in the Court's Order**
02 **Directing Service (Dkt. 10), that any document filed with the Court must be accompanied**
03 **by proof that it has been served upon all parties that have entered a notice of appearance**
04 **in this matter.**

05 (7) The Clerk shall direct copies of this Order to the parties and to the Honorable
06 James L. Robart.

07 DATED this 21st day of November, 2012.

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10 Mary Alice Theiler
11 United States Magistrate Judge
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